



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
UNDER LAW

A nonprofit, nonpartisan legal organization formed at the request of President Kennedy in 1963



August 28, 2009

Hon. Jean Cunningham
Chair
Virginia State Board of Elections
Richmond, VA 23219

Re: Proposed Regulation on Residency

Dear Madam Chair:

The Lawyers' Committee for Civil Rights Under Law (LCCRUL) deeply appreciates having had the opportunity to participate in the work of the Task Force on Residency. The thoughtful contributions made by all of the Task Force members are reflected in the proposed regulation (Proposed Regulation) that has been sent to the State Board of Elections (SBE) for review.

LCCRUL believes that the Proposed Regulation is a significant and positive achievement that meets the General Assembly's mandate to provide for uniform implementation of the residency rules across the Commonwealth. It achieves this goal by setting out clear definitions and guidelines to direct the registration process in most foreseeable circumstances. We recognize that the Taskforce tried to develop rules consistent with the requirements of state and federal laws. Notably, by prohibiting presumptions for or against residency based on non-material statuses (e.g., being a student or member of the military, temporarily living in a nursing home, and the like), the Proposed Regulation will go far toward ensuring that registrants to vote will be treated equally.

Nonetheless, LCCRUL believes that several aspects of the Proposed Rule could be modified to better achieve these important goals. These additional modifications are reflected in the proposal submitted by the Virginia Civic Engagement Table (Table). Three of those are especially significant.

First, LCCRUL believes that the discussion on required intent in the Proposed Rule's Section 2 provides helpful guidelines for members of the military, students and others in non-traditional statuses. However, the Proposed Rule also includes in that Section potentially troublesome language which seems to suggest that residency could in some cases depend on future events, which are by definition unknowable and contingent. We respectfully request, therefore, that the SBE also consider the language proposed by the Table for Section 2, because it specifically directs the domicile inquiry to the registrant's present (not future) intent and circumstances. Such an approach is consistent with the Virginia Supreme Court's holding in *Sachs v. Horan*.

Second, the LCCRUL also believes that the new provision suggested in Section 7 of the Table's proposal would help to address some of the problems general registrars face in connection with student and military applications. These individuals may have mailing addresses in administrative buildings but actually live in dormitories or similar buildings with addresses that do not easily fit into the currently approved registration form. This provision could avoid registration problems due to inadvertent errors in such situations:

Applications that provide both (i) a residence location (either a street address or physical location) that is sufficient for the registrar to assign the registrant to a precinct and (ii) a mailing address sufficient to ensure receipt of election-related mail from the registrar shall not be denied by reason of an inadequate or incomplete address.

Third, while we understand the desirability of registrars having an address that allows them to contact voters, as written proposed Section 13(b) has two problems that we feel need to be addressed. The first part of the provision, which requires registrars to obtain an alternate address from applicants who did not provide a mailing address, severely prejudices applicants who supplied an address that cannot receive mail. It appears to us that, by definition, such applicants will be unable to receive the registrar's request, and will therefore have their applications automatically rejected. Furthermore, these applicants are likely to learn that they were rejected only when they appear to vote on Election Day, at which point the opportunity to reapply will long since have expired for that election. In order to assist the registrars and allow the applicant the opportunity to vote in an election for which she has attempted to register, we suggest putting in place a procedure that would allow such a voter to update her records on Election Day and then be able to vote. We read the second part of Section 13(b) as allowing the rejection of registration applications based on returnable mail, which has been found to violate the National Voter Registration Act. *See United States Student Ass'n Found. V. Land*, 546 F.3d 373 (6th Cir. 2008).

We hope you will carefully consider the other targeted modifications proposed in the Table's submission, which are also important.

We thank you again for the opportunity to work on this very important project. We strongly encourage adoption of the Proposed Regulation, especially with the modifications suggested by the Table. These proposals will immensely improve the registration process, both as a legal and as a practical matter. We look forward to working together in future election-related matters.

Sincerely,



Jon Greenbaum
Legal Director and Deputy Director
Lawyers' Committee for Civil Rights Under Law